

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Agreement”) is made and entered into by and between the United States; the United States Department of Agriculture, Forest Service (“Forest Service”); Ketchikan Pulp Company (“KPC”); and, solely for the purposes set forth in paragraph 6b, Louisiana-Pacific Corporation (“LP”):

Whereas, on or before October 31, 2000, KPC completed timber harvest and road construction operations under Forest Service Timber Sale Contract A10fs-1042;

Whereas, since the end of timber harvest and road construction operations, KPC and the Forest Service have been engaged in negotiations and other activities seeking to close out Timber Sale Contract A10fs-1042 and related matters;

Whereas, simultaneous with their entry into this Agreement, the United States and KPC are entering into a Consent Decree (the “CERCLA Consent Decree”) which, upon approval by the United States District Court, will resolve claims between the parties relating to petroleum and hazardous substance contamination on twenty-four sites in the Tongass National Forest, Alaska;

Whereas, the parties to the “1997 Agreement,” defined below, wish to terminate such Agreement;

Whereas, without limiting in any way such termination of the 1997 Agreement, the parties desire that certain matters from the 1997 Agreement be addressed, with agreed modifications, in the CERCLA Consent Decree;

Whereas, to resolve certain contractual, environmental and other issues relating to KPC’s timber harvest and other operations in the Tongass National Forest, conditioned upon the judicial approval and entry of the CERCLA Consent Decree as a final judgment, the parties agree as follows:

## DEFINITIONS

a. "1997 Agreement" means the "Agreement Made And Entered Into The 21<sup>st</sup> Day Of February, 1997, By And Between The United States; United States Department of Agriculture, Forest Service; Ketichikan (*sic*) Pulp Company and [for certain limited purposes] Louisiana-Pacific Corporation." Portions of the 1997 Agreement modified Timber Sale Contract A10fs-1042, as detailed in the definition of that Timber Sale Contract set forth below.

b. "CERCLA Consent Decree" means the "CERCLA Consent Decree For Settlement of Response Costs And Performance Of Response Actions At Tongass National Forest Sites", entered into by the United States, Ketchikan Pulp Company, and, for limited purposes only, LP simultaneously with the execution of this Agreement, for lodging and entry in the United States District Court for the District of Alaska.

c. "Claims" means any demand for something due or believed to be due Including all claims, demands or requests for payment of monies or taking any action whatsoever, as well as all civil liabilities, losses, causes of action, lawsuits, potential lawsuits, counterclaims, offsets, charges, costs, expenses (Including attorneys', experts', and other consultants' fees), disputes, penalties, fines, enforcement actions, equitable relief, and damages, whether known or unknown, asserted or unasserted, past, present or future.

d. "Connell SUAs" means the following Forest Service special use authorizations issued to KPC:

- i. November 21, 1951 Special Use Permit, as amended, limited or superseded, if at all, by any one or more of the following: the Agreement by and between the United States and Ketchikan Pulp Company, dated April 29, 1952, transferring a portion of the permitted area to KPC; the Amendment to the Special Use Permit, dated July 14, 1952; Patent No. 1180771 (issued by the Bureau of Land Management on March 31, 1958, and recorded at Vol. 5 of Deeds at Page 349, Ketchikan Recording District on

April 30, 1958, and re-recorded at Vol. 5 of Deeds at Page 391, Ketchikan Recording District on May 14, 1958) of U.S. Surveys No. 3400 and 3401, Ketchikan Recording District, First Judicial District, State of Alaska; and the Exchange Deed executed on behalf of the United States Department of Agriculture, Forest Service, on October 20, 2000 and recorded at Book 317 at Page 626, Ketchikan Recording District, on October 23, 2000;

ii. December 14, 2000 Temporary Special Use Permit;

iii. Temporary Special Use Permit for 2002 (Authorization ID – KET 41); and

iv. Temporary Special Use Permit for 2003 (Authorization ID – KET 68).

e. “Contract” means Timber Sale Contract #A10fs-1042 between KPC and the United States, as that contract was earlier modified by agreement of KPC and the United States prior to the Tongass Timber Reform Act of 1990 (“TTRA”), further modified by Congress in TTRA and its text revised by the Secretary of Agriculture pursuant to the TTRA, and as the parties further modified it through parts I, II, III, IV, and VI of the 1997 Agreement.

f. “Government Connell Rights” means any Claims by or on behalf of the United States for which KPC is liable under a federal or state environmental statute for the disposal, release, discharge, or threat of release or discharge of hazardous substances, hazardous wastes, or oil at or into Connell Lake or into Ward Creek below Connell Lake during the effective period of the Connell SUAs; but excluding any Claim arising from the release or discharge or threat of release or discharge of a naturally occurring substance that has accumulated behind Connell Lake dam, or that has been or is being discharged or released into Ward Creek, as a result of the existence or operation of the dam, unless KPC would be liable therefor under a federal or State environmental statute independently of any liability arising from its ownership or operation of the Connell Lake dam or Connell Lake.

g. “Includes” and “Including” mean, respectively, “includes but is not limited to” and

“including but not limited to.”

h. “KPC Connell Rights” means any KPC Claims, arising out of, relating to, or with respect to, the Government Connell Rights, Including defenses, counterclaims, offsets, rights of contribution, rights of cost recovery, rights of allocation of responsibility for costs or damages, and other rights and remedies, whether arising at law or in equity and, in addition, any KPC Reserved Rights arising out of or relating to the Government Connell Rights.

i. “KPC Releasees” means Ketchikan Pulp Company as well as its employees, agents, servants, contractors, officers, directors and shareholders.

j. “KPC Reserved Rights” means any Claims by KPC arising under 42 U.S.C. § 9601 *et seq.* or Alaska Statute 46.03.822 except to the extent any such Claims have been compromised under the CERCLA Consent Decree.

k. “Longline Timber Sale” means Forest Service Timber Sale Contract No. 057078.

l. “LP Releasees” means Louisiana-Pacific Corporation as well as its employees, agents, servants, officers, directors and shareholders.

m. “United States” means the United States of America as well as its agencies, departments, and instrumentalities.

n. “United States Releasees” means the United States, as well as any and all of its agencies, departments and instrumentalities, and their employees and other executive officers.

## **PART I. RELEASE OF CONTRACT AND OTHER OBLIGATIONS AND LIABILITIES**

### **1. Releases by the United States With Respect to the Contract and the Longline Timber Sale:**

a. The United States hereby fully and finally releases the KPC Releasees with respect to all Claims, and the United States covenants not to sue any of the KPC Releasees with respect to any

Claims, which it may now or hereafter possess against any or all of the KPC Releasees: (1) arising in any way from or relating in any way to rights and obligations under the Contract, the Longline Timber Sale, or both; or (2) arising under Alaska state law other than AS 46.03.822, or under common law (Including Claims for nuisance, trespass, and other torts) from operations and activities in performance of, or in furthering performance of, the Contract, the Longline Timber Sale, or both. Nothing in this paragraph releases any civil action, claim or demand, if any, arising from or relating to fraud or violation of the False Claims Act, whether or not the action, demand or claim was raised or could have been raised with respect to the cases referenced in part IV of the 1997 Agreement.

b. The full and final release by the United States with respect to the Contract and the Longline Timber Sale shall constitute written notice to KPC pursuant to B9.6 of the Contract, and B9.6 of the Longline Timber Sale, that it has complied with and satisfied all of the terms and obligations of those timber sale contracts. In view of these circumstances, there is no longer any need for KPC to continue in force the performance bond required by B9.1 of the Contract, and KPC shall be entitled to terminate that performance bond immediately. KPC's performance bond for the Longline Timber Sale was terminated previously, pursuant to the consent which the Forest Service provided as of August 14, 2000.

**2. Releases by KPC With Respect to the Contract:** KPC hereby fully and finally releases each and all of the United States Releasees with respect to all Claims, and KPC covenants not to sue any of the United States Releasees with respect to any Claims, which it may now or hereafter possess against any or all of the United States Releasees, arising in any way from or relating in any way to rights and obligations under the Contract, the Longline Timber Sale, or both.

**3. Mutual Releases With Respect to the 1997 Agreement:** The parties agree to the following

mutual releases of rights and Claims under the 1997 Agreement:

a. The United States hereby fully and finally releases and discharges KPC from all of its remaining obligations and liabilities under the 1997 Agreement. This release by the United States with respect to the 1997 Agreement Includes the full and final release by the United States, and the covenant not to sue of the United States, with respect to all Claims which it may now or hereafter possess against all of the KPC Releasees, arising in any way from or relating in any way to rights and obligations under the 1997 Agreement. Nothing in this paragraph releases any civil action, claim or demand, if any, arising from or relating to fraud or violation of the False Claims Act, whether or not the action, demand or claim was raised or could have been raised with respect to the cases referenced in part IV of the 1997 Agreement.

b. KPC fully and finally releases and discharges the United States from all of its remaining obligations and liabilities under the 1997 Agreement. This release by KPC with respect to the 1997 Agreement Includes the release by KPC, and the covenant not to sue of KPC, with respect to all Claims which it may now or hereafter possess against all of the United States Releasees, arising in any way from or relating in any way to rights and obligations under the 1997 Agreement.

c. To the limited extent that LP was a party bound to provisions of the 1997 Agreement, the United States hereby fully and finally releases and discharges LP from all of its remaining obligations and liabilities under the 1997 Agreement. This release by the United States with respect to the 1997 Agreement Includes the release by the United States, and the covenant not to sue of the United States, with respect to all Claims which it may now or hereafter possess against all of the LP Releasees, arising in any way from or relating in any way to rights and obligations under the 1997 Agreement.

d. To the limited extent that LP was a party bound to provisions of the 1997 Agreement, LP fully and finally releases and discharges the United States from all of its remaining obligations and liabilities under the 1997 Agreement. This release by LP with respect to the 1997 Agreement includes the release by LP, and the covenant not to sue of LP, with respect to all Claims which it may now, or hereafter, possess against all of the United States Releasees, arising in any way from or relating in any way to rights and obligations under the 1997 Agreement.

e. Nothing in this paragraph releases any Claims by KPC for breach of this Agreement. Moreover, nothing in this paragraph releases any Claims by the United States for breach of this Agreement. Nor, to the limited extent to which LP is a party to this Agreement, does anything in this paragraph release any Claims by LP for breach of this Agreement.

## **PART II. RELEASE OF LIABILITIES AND OBLIGATIONS UNDER CONNELL SUAs**

### **4. Releases by the United States With Respect to the Connell SUAs:**

a. Excepting only the Government Connell Rights, the United States hereby fully and finally releases all of the KPC Releasees with respect to all Claims, and the United States covenants not to sue any of the KPC Releasees with respect to any Claims which it may now or hereafter possess, against any or all of the KPC Releasees, arising in any way from or relating in any way to rights and obligations under the Connell SUAs.

b. The Connell Lake special use authorization that was issued to KPC by the Forest Service, Ketchikan Ranger District ("KRD") for the period beginning January 1, 2003 and ending December 31, 2003 is designated Authorization ID: KET68. Without limiting the operation of any other provision of this Agreement, the final release by the United States with respect to the Connell SUAs in subparagraph a above shall constitute written confirmation that Authorization ID: KET68 has been

properly terminated and that KPC has no further obligations under that special use authorization.

c. Excepting only the Government Connell Rights, the release by the United States and the covenant not to sue of the United States set forth in subparagraph 4a shall extend, without limitation, to all Claims against the KPC Releasees which may in any way arise from, or be related in any way to, use or occupancy of Tongass National Forest lands pursuant to any or all of the Connell SUAs, and to all Claims which may arise from or be related in any way to KPC's operation of the Connell Lake dam and pipeline and impoundment of water by the dam onto lands of the Tongass National Forest. Excepting only the Government Connell Rights, the release by and covenant not to sue of the United States shall extend, without limitation, to all Claims on behalf of the Forest Service for any one or more of the following: restoration of lands flooded by the Connell dam impoundment; removal or remediation or other treatment or mitigation of sediment or any other naturally occurring substance that may accumulate, or may have accumulated, as a result of impoundment of water by the Connell Lake dam or that may be discharged, or may have been discharged, as a result of the operation of the dam, Including investigation costs; cleanup costs; rights of contribution, rights of cost recovery and rights of allocation of responsibility, whether arising at law or in equity, for any of the foregoing or any other costs or expenses; common law torts; diminished property value; toxic torts; fear of adverse health risks; trespass; nuisance; any other economic loss or damage; and punitive damages.

**5. Releases by KPC With Respect to the Connell SUAs:**

a. Excepting only the KPC Connell Rights, KPC hereby fully and finally releases each and all of the United States Releasees with respect to all Claims, and KPC covenants not to sue any of the United States Releasees with respect to any Claims which it may now or hereafter possess against



any or all of the United States Releasees, arising in any way from or relating in any way to rights and obligations under the Connell SUAs.

b. Excepting only the KPC Connell Rights, the release by KPC, and the covenant not to sue of KPC set forth in subparagraph 5a above shall extend, without limitation, to all Claims against the United States Releasees which may in any way arise from, or be related in any way to, use and occupancy of Tongass National Forest lands pursuant to any or all of the Connell SUAs, and to all Claims which may arise from or be related in any way to the Forest Service's grant of authorization for KPC's operation of the Connell Lake dam and pipeline and impoundment of water by the dam onto lands of the Tongass National Forest. Excepting only the KPC Connell Rights, the release by, and covenant not to sue of, KPC shall extend, without limitation, to all Claims for any one or more of the following: restoration of lands flooded by the Connell dam impoundment; removal or remediation or other treatment or mitigation of sediment or any other naturally occurring substance that may accumulate, or may have accumulated, as a result of impoundment of water by the Connell Lake dam or that may be discharged, or may have been discharged, as a result of the operation of the dam, Including investigation costs; cleanup costs; rights of contribution, rights of cost recovery and rights of allocation of responsibility, whether arising at law or in equity, for any of the foregoing or any other costs or expenses; common law torts; diminished property value; toxic torts; fear of adverse health risks; trespass; nuisance; any other economic loss or damage; and punitive damages.

### **PART III. MISCELLANEOUS PROVISIONS**

#### **6. Parties Bound:**

a. This agreement binds KPC, the United States, the Forest Service and, only to the extent specified in subparagraph 6b below, LP, Including their officers, agents, successors and assigns.

b. LP is bound solely to the definitions paragraphs, paragraphs 3c, 3d, 3e and Part III of this Agreement.

7. **Agreement not Related to Any Income Tax Issue**: This Agreement is in no way related to or concerned with income or other taxes for which KPC or LP are now liable or may be liable in the future as a result of this Agreement.

8. **Purpose of Agreement**: This Agreement is entered into for the sole purpose of settling certain outstanding contract and other issues and assuring KPC's compliance with environmental laws and resolution of environmental and other issues. This Agreement shall not be evidence, cited, or otherwise relied on in any other administrative appeal or legal proceeding, whether administrative or judicial in nature, in which the signing entities have or may acquire an interest, except as is necessary: to evidence the terms of this Agreement; to evidence that the signing entities entered the terms of this Agreement; and to effectuate the terms of this Agreement. This Agreement shall not be evidence of any allegations raised by any party in any case, a waiver by, or an admission against any signing entity for any purpose other than effectuating the terms of this Agreement.

9. **No Admission of Liability**: This Agreement does not constitute an admission of liability and will not prejudice or otherwise affect the rights of any of the signing entities with respect to any other litigation or factual situation, except as expressly provided herein.

10. **No Third-Party Beneficiary Rights**: All rights created under this agreement are limited to the parties. No third-party beneficiary rights are created by this Agreement.

11. **Regulations and Unappropriated Funds**: Nothing in this Agreement shall be construed to deprive any federal official of authority to revise, amend, or promulgate regulations. Nothing in this Agreement shall be construed to commit any federal official to expend funds not appropriated by

Congress.

**12. Disputes Clause:** All disputes relating to Parts I and III of this Agreement relevant to contract issues shall be governed by the Contract Disputes Act, 41 U.S.C. § 601 *et seq.* Those provisions of Parts I and III of this Agreement relevant to other rights and obligations, and the provisions of Part II of this Agreement, shall be enforceable as an agreement entered into to resolve potential litigation under federal law.

**13. Notices and Submissions:** Whenever, under the terms of this Agreement, notice is required to be given, or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the United States, KPC, and LP, respectively.

**AS TO THE UNITED STATES:**

Director, Engineering  
USDA Forest Service  
Room 500 RPC  
1601 Kent Street  
Arlington, VA 22209

Director, Aviation and Engineering Management  
United States Forest Service – Alaska Region  
P.O. Box 21628  
Juneau, AK 99802-1628

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611

Deputy Assistant General Counsel for Pollution Control  
Conservation and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
Room 3351 South Building  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-1412 and

Deputy Associate Regional Attorney  
Office of the General Counsel  
U.S. Department of Agriculture  
1734 Federal Building  
1220 S.W. 3<sup>rd</sup> Avenue  
Portland, OR 97204-2825

**AS TO KPC:**

Ketchikan Pulp Company and  
c/o General Counsel  
Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, OR 97205-3303

John W. Peterson, Esq.  
Ziegler Law Firm  
307 Bawden Street  
Ketchikan, AK 99901

**AS TO LP:**

General Counsel and  
Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, OR 97205-3303

John W. Peterson, Esq  
Ziegler Law Firm  
307 Bawden Street  
Ketchikan, AK 99901

**14. Integration Clause:** This written Agreement, together with the CERCLA Consent Decree and all of the Appendices thereto, constitute the entire agreement among the signing entities. However, the CERCLA Consent Decree and its Appendices are included in the foregoing sentence for reference purposes only and shall not be incorporated into, or enforceable under, this Agreement.

**15. Authority to Execute Agreement:** Each signatory to the Agreement represents that s/he has the authority to sign and to commit to the Agreement the entity on whose behalf s/he signs.

**16. Effective Date of Agreement:** This Agreement shall be effective and fully binding in accordance with its terms upon the occurrence of both of the following: (a) execution of the Agreement by the parties, and (b) entry of the CERCLA Consent Decree.

**17. Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by any combination of the signing entities in separate counterparts, each of which counterparts shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

THE UNDERSIGNED PARTY enters into this Settlement Agreement.

**FOR KETCHIKAN PULP COMPANY**

Date: \_\_\_\_\_

\_\_\_\_\_  
CHRIS PAULSON  
President and General Manager  
Ketchikan Pulp Company  
P.O. Box 6600  
Ketchikan, AK 99901

THE UNDERSIGNED PARTY enters into this Settlement Agreement solely for the purposes set forth in subparagraph 6b.

**FOR LOUISIANA-PACIFIC CORPORATION**

Date: \_\_\_\_\_

\_\_\_\_\_  
CURTIS M. STEVENS  
Executive Vice President, Administration, and  
Chief Financial Officer  
Louisiana-Pacific Corporation

THE UNDERSIGNED PARTY enters into this Settlement Agreement.

**FOR THE UNITED STATES OF AMERICA**

Date: \_\_\_\_\_

\_\_\_\_\_  
THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
PETER D. KEISLER  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
Washington, DC 20530

THE UNDERSIGNED PARTY enters into this Settlement Agreement.

**FOR THE USDA FOREST SERVICE**

Date: \_\_\_\_\_

\_\_\_\_\_  
MARK E. REY  
Undersecretary for Natural Resources and  
Environment  
U.S. Department of Agriculture  
Washington, DC 20250